

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5493 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

-----  
MAHESHKUMAR BHAVANBHAI CHAUHAN

Versus

STATE OF GUJARAT

-----  
Appearance:

MR PF MAKWANA for Petitioner

Mr. Samir Dave, A.G.P. for Respondent No.1, 2 and 3.

Ms. P.J. Davawala for the respondent no.4.

-----  
CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 15/10/1999

ORAL JUDGEMENT

Heard learned Advocate Mr. P.F. Makwana for the petitioner, learned A.G.P. Mr. Samir Dave for the respondents nos.1, 2 and 3 and Ms. P.J. Davawala for the respondent no.4.

1. The detention order dated 5-12-1998 passed by the respondent no.2-District Magistrate, Ahmedabad against

the petitioner in exercise of powers conferred under Section 3(2) of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980( "PBM Act" for short) is challenged in the present petition filed under Article 226 of the Constitution.

2. That the grounds of detention supplied to the petitioner are produced at Annexure "B" which indicate that the petitioner was running a fairprice shop managed by Bandukiya Khadi Gramoudyog Trust at Sanand, District Ahmedabad. That on 15-10-1998 Civil Supply Department made inquiries at the said fairprice shop and it was found that several irregularities were committed by the detenu in maintaining stock registers and relevant account. That the explanation tendered by the detenu for the shortage of stock of essential commodities like wheat, kerosene etc. not being satisfactory the department ordered to seize the stock and suspend the licence. However, the detenu preferred appeal which was rejected and a revision was preferred to the State Government which was pending hearing and during the said proceedings on account of stay granted by the authority the detenu continued the shop. It is stated in the grounds of detention that on account of injunction order issued by the Director of Civil Supplies in the proceedings preferred the detenu continued the business at the fairprice shop. That thereby the detaining authority has come to the conclusion that the detenu having repeated his activity which was prejudicially affecting the supply of essential commodities, the impugned order has been passed.

3. The petitioner has challenged the impugned order on numerous grounds. It has been contended on behalf of the petitioner that the licence granted to the detenu was expiring on 31st December, 1998, still however, the detaining authority has passed the impugned order without considering the lesser drastic remedy of cancellation of licence. The contention could hardly merit acceptance in the facts involved in the present matter.

4. It is to be noted that at the first instance on finding the irregularity and shortage of stock in respect to essential commodities, action was taken prior to 15-10-1998. That on account of irregularity, action was taken against the detenu on 25-2-1997 and the licence was cancelled. That vide order dated 4-4-1997, the stock was seized, however, the detenu had preferred proceedings before the Collector and thereafter on rejection of the same, appeal was filed before the Director of Civil Supplies on 30th April, 1997. That the said authority

extended the injunction against cancellation of licence as well as seizure of the stock from time to time upto 30th December, 1998.

5. That on account of above stated facts the detaining authority has come to the conclusion that as the detenu has been filing proceedings and on account of stay pending hearing has been continuing the business of fairprice shop. Under the circumstances, the remedy to cancel the licence has not been sufficient to prevent the detenu from continuing his prejudicial activity.

6. In view of the past conduct of the detenu in the pending proceedings before the Director of Civil Supplies, the detaining authority is justified in coming to the conclusion that unless the detenu is detained by exercising powers under Section 3(2) of "PBM Act", the detenu could not be prevented from continuing his prejudicial activity.

7. The second contention urged on behalf of the petitioner is in respect to alleged representation dated 14-5-1999. It is contended on behalf of the petitioner that the father of the petitioner has forwarded a copy of the representation addressed to detaining authority through Superintendent Junagadh Jail with a request to obtain the signature of the detenu and send it to the appropriate authority. However, neither the respondent no.1-State of Gujarat nor the respondent no.4-Union of India have considered the same or have given any response to such representation. It is further submitted by Mr. Makwana that one P.R. Shukhla, Deputy Secretary to the Government of Gujarat has filed affidavit-in-reply on behalf of the respondent no.1 dated 9th September, 1999. That in paragraph 4 of the said affidavit, deponent has denied to have received any such representation as alleged in the petition. Shri Makwana has tendered the affidavit-in-rejoinder sworn by the father of the detenu dated 8th October, 1999 and on the basis of the same it is stated that the copy of the representation dated 14-5-1999 was sent to the Superintendent of Junagadh Jail by registered post, however, the postal receipt has been lost by the father of the detenu.

8. That one Shri R.C. Dhankar, Under Secretary in the Department of Consumer Affairs, New Delhi has placed on record affidavit-in-reply on behalf of the respondent no.4 sworn on 12th September, 1999. In the said affidavit also the deponent has denied the fact of receipt of any such representation. That on appreciation of the facts, it is difficult to accept the submission of

the petitioner that the representations which were forwarded through Superintendent of Junagadh Jail by registered post were received by the respective authorities but the deponents on behalf of respondents nos.1 and 4 have falsely denied the receipt of the same. That in the absence of copy of any representation produced on record, it is difficult to accept the submission as urged at the Bar and as the petitioner has failed to establish the primary facts in respect to sending of representation to the respective authority, the contention in respect to non consideration of the representation by the concerned authority has no merit, and hence, stands rejected.

9. The third contention urged on behalf of the petitioner is that the documents supplied alongwith the grounds of detention vide pages 33, 35-A and 36 of the compilation were not legible. That on account of illegible documents supplied by the respondent no.2 the petitioner was prevented from making effective representation which has rendered the impugned order invalid. On perusal of pages 33, 35-A and 36, it is very difficult to accept the submission. That the contention is not only false and frivolous but is also vexatious because the compilation produced on record by the petitioner disclose that all the aforesaid three pages are clearly legible, and hence, this contention also stands rejected.

10. Finally, Mr. Makwana has urged on behalf of the petitioner to the effect that the detention order though passed on 5-12-1998 no serious attempts were made by the authority to serve the same on the petitioner till 17-4-1999 when the petitioner himself surrendered, and thereby also, the detention order being bad in law is required to be quashed and set aside. Reliance is placed on the observation of the Supreme Court in the matter of SMF SULTAN ABDUL KADER VS. JT. SECY., TO GOVT. OF INDIA AND OTHERS, ( (1988) 8 SUPREME COURT CASES 343).

11. In the instant case, as apparent from the material placed on record, it is difficult to accept this contention. It appears that as stated on behalf of the respondent no.1-State by the learned A.G.P. Mr. Samir Dave, time and again attempts were made by the DSP, Ahmedabad (Rural) to execute the detention order, however, as the detenu was not available on probable address, it could not be served. That ultimately, an application no.407/99 was moved in Sessions Court, Ahmedabad(Rural) to claim declaration that the detenu is

absconding and on 10-3-1999, the Court has passed the order declaring the detenu as absconding. In the said facts and circumstances of the case, if the detenu has been absconding from his usual place, the detenu cannot be heard to say that the detaining authority has failed to execute the detention order within a reasonable period, and thereby, detention order has become illegal. It would be worth to note, at this stage, that present petitioner having come to know about the passing of detention order dated 5-12-1998 had moved Spl.Civil Application no.1696/98 on 6th March, 1999 in this Court and had prayed relief against execution of the detention order. That after the notice as the Court was not inclined to admit the petition, the petitioner has withdrawn the said petition on 7th April, 1999 and thereafter having surrendered on 17-4-1999 has filed the present petition on 27-7-1999. The above stated facts disclose the conduct of the petitioner who could hardly be heard to say that the detaining authority having not made serious attempt to serve the order of detention, the order has become stale and illegal. That the observations made by the Supreme Court in SMF SULTANS'S case (Surpra) has no application to the case of the petitioner on the above stated facts. Hence, this contention also stands rejected.

12. On the basis of the aforesaid discussion, the petition fails and is rejected. Rule is discharged.

\*\*\*\*\*

stanley-akt.